NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Global Sign Industries, LLC *and* Sheet Metal Workers' International Association Local 19, AFL–CIO. Cases 4–CA–35947 and 4–CA–36062

September 25, 2009

DECISION AND ORDER¹

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file a sufficient answer to the complaint and has failed to file any answer to the amended complaint. On a series of charges filed by the Union,² the General Counsel issued a consolidated complaint on September 5, 2008,3 and an amended complaint on November 7 against the Respondent. The consolidated complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by discharging two employees and that the Respondent committed multiple independent violations of Section 8(a)(1). The Respondent, by counsel, submitted a letter to the Region stating that the Respondent "denies the material allegations" of the complaint and that, for economic reasons, the Respondent had gone out of business.

The amended complaint repeats the allegations of the original complaint and also alleges that a *Gissel* bargaining order⁴ is necessary to remedy the alleged violations. The Respondent failed to file an answer to the amended complaint.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed U.S.L.W. (U.S. September 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

On December 4, the General Counsel filed a Motion for Default or Summary Judgment with the Board. On December 5, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted, allowing until December 19 for a response to be filed. That same day, the law firm that had responded to the original complaint submitted a letter to the Board stating that the firm no longer represents the Respondent and that the Respondent has gone out of business.

The Respondent has not responded to the Motion for Default or Summary Judgment or to the Notice to Show Cause. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary or Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Section 102.20 further states that the answer "shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial." In the present case, the September 5 complaint cites Section 102.20 and affirmatively states that unless an answer is received by the Region by September 19 or postmarked by September 18, the Board may find that the allegations in the complaint are true.

By letter dated September 18 and received by the Region on September 22, the Respondent, by counsel, stated:

While Respondent, Global Sign Industries, LLC denies the material allegations of the above referenced complaint, it has been forced to close due to economic hardship. In winding-up its operations, respondent is having its financial state evaluated in consideration of the possibility of escrowing a sum representative of back pay.⁶

The undisputed allegations in the Motion for Default or Summary Judgment disclose that, by letter dated Sep-

² The charge in Case 4–CA–35947 was filed on February 11 and amended on February 14, April 23, and May 12. The charge in Case 4-CA-36062 was filed on March 28.

³ All dates hereafter are in 2008.

⁴ See *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). As stated below, we deny without prejudice the General Counsel's request for a *Gissel* order.

⁵ The General Counsel had previously filed a Motion for Default or Summary Judgment on September 30. The Board issued an order transferring the case to the Board and a Notice to Show Cause why the motion should not be granted. On October 15, the General Counsel requested to withdraw his motion, because he was considering whether to seek a *Gissel* bargaining order. On October 27, the Board granted the General Counsel's request and remanded the case to the Region.

⁶ It is not clear whether the letter was postmarked September 18. However, the General Counsel seeks default judgment on the basis that the letter was an inadequate answer, not that it was untimely.

tember 22, the Region notified the Respondent that its September 18 letter did not admit, deny or explain each of the facts alleged in the complaint as required by Section 102.20, and that a motion for default judgment would be filed unless the Respondent filed an appropriate answer by September 29. The letter attached a copy of Sections 102.20 through 102.23 of the Board's Rules.

We find that the Respondent's September 18 letter does not constitute a proper answer under Section 102.20. The Board has found similarly worded answers inadequate, because they fail to address the factual or legal allegations of the complaint. See, e.g., *Great Clips*, 339 NLRB 1104, 1104–1105 (2003) (default judgment granted where answer stated: "The allegations in the Complaint are denied. Respondent demands strict proof thereof."); *Jet Electric Co.*, 334 NLRB 1059, 1059–1060 (2001) (summary judgment granted where answer stated: "I deny all complaints directed against me . . . or my company"); *Eckert Fire Protection Co.*, 329 NLRB 920, 920–921 (1999) (summary judgment granted where answer stated: "I deny any and all charges referenced above" and "I have closed my business"). ⁷

The inadequacy of the September 18 letter is compounded by its statement that the "material" allegations of the complaint are denied. That implies that there are allegations that the Respondent does not consider "material" and that those allegations are not denied. Absent any specificity by the Respondent, there is no way for the General Counsel or the Board to determine which allegations are disputed. See *Great Clips*, supra at 1105 ("The General Counsel, for example, has no way to know whether jurisdictional facts are denied and thus whether jurisdiction is to be litigated"; absent default judgment, "the General Counsel would be needlessly put to the proof on such matters as service of the charge, jurisdiction, and agency."). 8

The September 18 letter also states that the Respondent has closed for economic reasons. The cessation of operations, however, does not excuse a respondent from filing a sufficient answer. *OK Towel & Uniform*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15 (2000).

The November 7 amended complaint, like the original complaint, cites Section 102.20. The amended complaint states that an answer must be received by November 21 or postmarked on or before November 20, and further states that unless an answer is filed, the Board may find that the allegations in the complaint are true. By letter dated November 21, the Region notified the Respondent and its counsel of record that an answer to the amended complaint had not been filed as required by Section 102.20, and that a motion for default or summary judgment would be filed with the Board unless the Respondent filed an appropriate answer by November 28.

The Respondent has filed no answer to the amended complaint, which contains new allegations that a *Gissel* bargaining order is necessary. The other allegations in the amended complaint reiterate those in the original complaint. The Board will not grant summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial. See *TPS/Total Property Services of New England*, 306 NLRB 633 (1992). As found above, however, the Respondent's answer to the original complaint was not a proper denial.

In sum, the Respondent failed to file a sufficient answer to the original complaint, failed to file any answer to the new allegations in the amended complaint, and failed to respond to the Notice to Show Cause why default judgment should not be granted. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

 $^{^7}$ In finding the September 18 letter inadequate as an answer, Member Schaumber notes that the answer was filed by an attorney, not a lay person.

⁸ The September 18 letter was submitted by counsel. Therefore, the Board's practice of "show[ing] some leniency toward a pro se litigant's efforts to comply with our procedural rules," *Mid-Wilshire Health Care Center*, 331 NLRB 1032, 1033 (2000), does not apply to our evaluation of the letter.

As noted above, the law firm that submitted the September 18 letter notified the Board on December 5 that the firm no longer represents the Respondent. Even assuming the Respondent became pro se at some unknown time after the September 18 letter was filed, default judgment is still appropriate. As explained below, despite notice from the Region, the Respondent has made no attempt at all to supplement the September 18 letter, to file any answer to the amended complaint, to explain its failure to do so, or to respond to the Notice to Show Cause. Thus, the Respondent has not shown "efforts to comply with our procedural rules." Id. In any event, with the exception of *Great Clips*, all of

the cases cited in the text above involved answers that were, or appeared to be, pro se and were nevertheless found inadequate.

⁹ Member Schaumber notes that the Respondent never attempted to explain whether, or how, the alleged closure prevented it from filing an adequate answer. *OK Towel & Uniform*, supra at 1100–1102 fn. 3 (2003). Therefore, he agrees that the asserted closure here does not excuse the Respondent's failure.

¹⁰ According to the undisputed allegations in the motion for default or summary judgment, the Respondent refused service of the amended complaint by mail, but was served in person on November 7.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with a facility in Tullytown, Pennsylvania, has been engaged in the fabrication, installation, and repair of signs.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Sheet Metal Workers' International Association, Local 19, AFL—CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Michael S. Seserko

Jennifer Marcolina

Office Manager/
Personnel Manager

Tom Henry

Shop Manager

At all material times until about 2008, Cynthia Montero held the position of project manager and was an agent of the Respondent within the meaning of Section 2(13) of the Act.

On or about February 8, 2008, the Respondent, by Michael Seserko, its president and sole owner, interrogated certain employees concerning their union activities.

On or about February 12, 2008, the Respondent, by Seserko, interrogated an employee concerning the employee's union activities and sympathies and the union activities of other employees.

On or about February 15, 2008, the Respondent, by Seserko, interrogated an employee concerning the employee's union activities and the union activities of other employees.

In mid-March 2008, the Respondent, by Seserko, interrogated an employee concerning the union activities and sympathies of other employees.

In late March 2008, the Respondent, by Seserko, demanded that an employee give Seserko a tape recording of the Respondent's antiunion meeting with employees, and thereafter refused to return the tape and tape recorder to the employee.

On or about March 20, 2008, the Respondent, by Seserko: (1) created the impression among employees that their union activities were under surveillance by telling an employee the names of employees who still supported the Union; (2) interrogated the employee concerning the employee's union sympathies and the union sympathies of other employees; and (3) promised a benefit to the employee to discourage the employee from supporting the Union.

On or about March 20, 2008, the Respondent, by Seserko: (1) requested that employees give false testimony that an employee was a manager; (2) announced that terms and conditions of employment were frozen and would not change and that the Respondent would never sign a contract with the Union; (3) promised promotions to employees in order to discourage them from supporting the Union; and (4) told employees that he had drawn up papers for them to sign withdrawing their union authorization cards.

On or about April 2, 2008, the Respondent, by Seserko, told an employee to resign because the employee continued to support the Union.

On or about April 4, 2008, the Respondent, by Seserko, solicited its employees to sign forms withdrawing their union authorization cards.

On or about April 11, 2008, the Respondent, by Seserko, threatened to close its installation department and/or to subcontract the work employees were performing there.

On or about February 11, 2008, the Respondent discharged employees Patrick Velenger (the leading employee union organizer) and Robert Holt (a prominent employee union supporter), because Velenger and Holt supported and assisted the Union.

CONCLUSIONS OF LAW

- 1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
- 2. By discharging Velenger and Holt, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and

desist and to take certain affirmative action designed to effectuate the policies of the Act. 11 Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Velenger and Holt, we shall order the Respondent to offer these employees full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make Velenger and Holt whole for any loss of earnings and other benefits suffered as a result of the Respondents' unlawful conduct, with interest. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). 12 The Respondent shall also be required to expunge from its files and records any and all references to the unlawful discharges, and to notify Velenger and Holt in writing that this has been done and that the unlawful discharges will not be used against them in any wav. 13

ORDER

The National Labor Relations Board orders that the Respondent, Global Sign Industries, LLC, Tullytown, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Interrogating employees about their union activities and sympathies or about the union activities and sympathies of other employees.
- (b) Confiscating and refusing to return an employee's tape recorder and tape of the Respondent's antiunion meeting with employees.
- (c) Creating the impression among employees that their union activities are under surveillance.
- (d) Promising benefits or promotions to employees to discourage them from supporting the Union Sheet Metal Workers' International Association Local 19, AFL–CIO (the Union) or any other labor organization.

- (e) Requesting that employees give false testimony that an employee was a manager.
- (f) Announcing that terms and conditions of employment are frozen and will not change and that the Respondent will never sign a contract with the Union.
- (g) Soliciting employees to withdraw their union authorization cards and telling employees that the Respondent has drawn up papers for them to sign withdrawing their union authorization cards.
- (h) Telling employees to resign because they continue to support the Union or any other labor organization.
- (i) Threatening to close its installation department or subcontract the work performed by employees there.
- (j) Discharging employees because they support and assist the Union or any other labor organization.
- (k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer Patrick Velenger and Robert Holt full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (b) Make Patrick Velenger and Robert Holt whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
- (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Velenger and Holt, and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its facility in Tullytown, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice,

¹¹ The Respondent's September 18 letter to the Region contends that the Respondent has ceased operations. The effect of the alleged cessation of operation on the remedy is a matter best left to the compliance stage of this proceeding. *Allen Storage & Moving Co.*, 342 NLRB 501 fn. 1 (2004).

The General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Acme Press*, 353 NLRB No. 73 (2008).

¹³ The General Counsel's request for a *Gissel* bargaining order is denied without prejudice to the General Counsel's right to renew his request, should he still maintain that such relief is necessary.

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judg-

on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 8, 2008.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 25, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union activities and sympathies or about the union activities and sympathies of other employees.

WE WILL NOT confiscate and refuse to return any employee's tape recorder and tape of our antiunion meeting with employees.

WE WILL NOT create the impression among employees that their union activities are under surveillance.

WE WILL NOT promise benefits or promotions to employees to discourage them from supporting Sheet Metal Workers' International Association Local 19, AFL–CIO or any other labor organization.

WE WILL NOT request that employees give false testimony that an employee was a manager.

WE WILL NOT announce that terms of conditions of employment are frozen and will not change and that we will never sign a contract with the Union.

WE WILL NOT solicit employees to withdraw their union authorization cards and tell employees that we have drawn up papers for them to sign withdrawing their union authorization cards.

WE WILL NOT tell employees to resign because they continue to support the Union or any other labor organization.

WE WILL NOT threaten to close our installation department or subcontract the work performed by employees there

WE WILL NOT discharge employees because they support and assist the Union or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Patrick Velenger and Robert Holt full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Velenger and Holt whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Velenger and Holt, and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.

GLOBAL SIGN INDUSTRIES, LLC

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."